



1995 ASSEMBLY BILL 319

April 19, 1995 - Introduced by Representatives BALDWIN, LORGE, COGGS, CULLEN, DUFF, NOTESTEIN, F. LASEE, SERATTI, GROTHMAN, RYBA, R. YOUNG, HANSON, WILDER, BOYLE, WARD and L. YOUNG, cosponsored by Senators RISSER, HUELSMAN and MOORE. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to renumber and amend** 165.84 (1); **to amend** 165.84 (2); and **to create**
2 165.84 (1) (b) to (d) of the statutes; **relating to:** return of fingerprint records
3 and photographs.

Analysis by the Legislative Reference Bureau

Under current law, if a person is arrested or taken into custody as a fugitive from justice or regarding a felony or another specified serious offense (such as an offense involving weapons or dangerous drugs), the applicable law enforcement agency must obtain fingerprint records and other identifying data concerning the person. The law enforcement agency may obtain these records and data concerning persons arrested or taken into custody regarding other offenses. The fingerprint record must be returned, upon request, if the person is released without charges or cleared of the offense.

This bill provides a procedure to determine if fingerprint records and photographs should be returned in cases in which there are no charges or the case does not result in a criminal conviction. The person may request approval from the applicable prosecutor's office for the return of the fingerprint records and the photographs. The person may make the request at the conclusion of the case, except that if the case resulted in a judgment that there was an ordinance or forfeiture violation, the person must wait until at least 3 years after the judgment. If the person makes a request to the prosecutor's office, that office determines if the person has any criminal conviction. That office grants an approval only if it determines that the person has no criminal conviction. If the person receives an approval, he or she may request the applicable law enforcement agency to return the fingerprint records and photographs. If the agency determines the approval is valid, it must return the fingerprint records and photographs.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 165.84 (1) of the statutes is renumbered 165.84 (1) (a) and amended
2 to read:

3 165.84 (1) (a) All persons in charge of law enforcement and tribal law
4 enforcement agencies shall obtain, or cause to be obtained, the fingerprints in
5 duplicate, according to the fingerprint system of identification established by the
6 director of the F.B.I., full face, profile and full length photographs, and other
7 available identifying data, of each person arrested or taken into custody for an
8 offense of a type designated in s. 165.83 (2) (a), of all persons arrested or taken into
9 custody as fugitives from justice, and fingerprints in duplicate and other identifying
10 data of all unidentified human corpses in their jurisdictions, but photographs need
11 not be taken if it is known that photographs of the type listed, taken within the
12 previous year, are on file at the department. Fingerprints and other identifying data
13 of persons arrested or taken into custody for offenses other than those designated in
14 s. 165.83 (2) (a) may be taken at the discretion of the law enforcement or tribal law
15 enforcement agency concerned. ~~Any~~ If a person is arrested or taken into custody and
16 subsequently released without charge, or cleared of the offense through court
17 proceedings, ~~shall have any fingerprint record taken in connection therewith~~
18 returned upon request there are no charges or the case does not result in a criminal
19 conviction, the person may proceed under par. (b) or (c), whichever is applicable.

20 **SECTION 2.** 165.84 (1) (b) to (d) of the statutes are created to read:

1 165.84 (1) (b) If the case under par. (a) did not result in a criminal conviction
2 or in a judgment that there was an ordinance or a forfeiture violation, the person
3 under par. (a) may request approval from the office of the prosecutor that handled
4 the person's case for the return of the fingerprint record and photographs taken
5 under par. (a). If that office determines that the person has any criminal conviction,
6 the office shall deny approval in writing to the person. If that office determines that
7 the person does not have any criminal conviction, the office shall provide the person
8 with approval in writing.

9 (c) If the case under par. (a) resulted in a judgment that there was an ordinance
10 or forfeiture violation, at any time after 3 years after that judgment the person under
11 par. (a) may request approval from the office of the prosecutor that handled the
12 person's case for the return of the fingerprint record and photographs taken under
13 par. (a). If that office determines that the person has any criminal conviction, the
14 office shall deny approval in writing to the person. If that office determines that the
15 person does not have any criminal conviction, the office shall provide the person with
16 approval in writing or shall extend the deadline under this paragraph for a period
17 of time not exceeding 6 years after the judgment of the ordinance or forfeiture
18 violation. If there is an extension, the person may proceed under this paragraph
19 after the deadline has passed. If the office, at that time, determines that the person
20 has any criminal conviction, the office shall deny approval in writing to the person.
21 If the office, at that time, determines that the person does not have any criminal
22 conviction, the office shall provide the person with approval in writing.

23 (d) If a person obtains approval in writing from a prosecutor's office under par.
24 (b) or (c), he or she may request any law enforcement agency or tribal law
25 enforcement agency to return any fingerprint record and photograph taken under

1 par. (a) in its possession. The agency may check with the applicable prosecutor's
2 office to help determine the validity of the approval. If the agency determines that
3 the person has a valid approval, the agency shall return the fingerprint record and
4 photograph to the person. The agency is only responsible for returning fingerprint
5 records and photographs in its possession and is not responsible for fingerprint
6 records and photographs in the possession of any other law enforcement agency or
7 tribal law enforcement agency.

8 **SECTION 3.** 165.84 (2) of the statutes is amended to read:

9 165.84 (2) Fingerprints and other identifying data required to be taken under
10 sub. (1) (a) shall be forwarded to the department within 24 hours after taking for
11 filing and classification, but the period of 24 hours may be extended to cover any
12 intervening holiday or weekend. Photographs taken shall be forwarded at the
13 discretion of the law enforcement or tribal law enforcement agency concerned, but,
14 if not forwarded, the fingerprint record shall be marked "Photo available" and the
15 photographs shall be forwarded subsequently if the department so requests.

16 **SECTION 4. Initial applicability.**

17 (1) This act first applies to requests made on the effective date of this
18 subsection.

19 (END)